UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,808	02/18/2000	Masakatsu Mori	ASA-672-02	8316

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ART UNIT	PAPER NUMBER
3625	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	09/506,808	MORI ET AL.
Office Action Summary	Examiner	Art Unit	
	Yogesh C. Garg	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 June 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>34-83</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>34-83</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

6/20/2008 has been entered.

2.   Amendment filed 6/20/2008 is entered. Claims 34, 37,40, 45, 54, 60 are currently

amended and new claims 78-83 are added. Claims 1-33 were previously canceled.

Claims 34-83 are pending.

Response to Arguments

3.   Applicant's arguments filed 6/20/2008 have been fully considered but they are

not persuasive. The applicant's arguments (pages 20-25) are summarized as below:

        Ausubel, alone or combined with Fisher, does not teach that : (i) the auction is

conducted for single kind of product or products, (ii) the step of judging whether the

current auction price is equal to or lower than the price that the bidder thinks acceptable

to pay, for each bidder and therefore does not show the repeating of steps including

step c), as required by step g), and (iii) in step e whether a competitive state occurs or

not, based on the amount of products to be auctioned and the sum of amounts of

products that the bidders desire to purchase. The examiner respectfully disagrees.

Ausubel does teach conducting auction for single kind of product or products (see at

least col.2, lines 37-50 and col.10 lines 43-54. Ausubel teaches conducting an auction

for a single kind of shares or shares.). Ausubel teaches the step of judging whether the

current auction price is equal to or lower than the price that the bidder thinks acceptable

to pay, for each bidder and therefore shows the repeating of step c (see at least col.11

line 5-col.12, line 30. On receipt of bidders flexible pricing structure that is the first

bidder is willing to pay any price between $10 to $14, the server judges that the current

auction price of $10.00 per share is equal to or lower that the bidder thinks acceptable

to pay and therefore based upon this judgment the server increments the share prices

to $12 or $13 or $14. The same disclosure that is col.11 line 5-col.12, line 30 suggests

determining if a competitive state occurs or not, based on the amount of products to be

auctioned and the sum of amounts of products that the bidders desire to purchase

because based upon the number of bidders willing to accept a higher price than the

auction price of $10 the server is capable of incrementing the auction price to $11 or

$12 and so on.

In view of the foregoing, the rejection of currently amended claims in view of the

already recited prior art of Ausubel is sustainable.

4.   Examiner cites particular columns and line numbers in the references as applied

to the claims below for the convenience of the applicant. Although the specified

citations are representative of the teachings in the art and are applied to the specific

limitations within the individual claim, other relevant and related passages and figures

may apply as well. It is respectfully requested that, in preparing responses, the

applicant fully consider the other relevant and related passages and figures in the cited

references as potentially teaching all or part of the claimed invention, as well as the

context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> **(e) the invention was described in (1) an application for patent, published under section 122(b),
> by another filed in the United States before the invention by the applicant for patent or (2) a
> patent granted on an application for patent by another filed in the United States before the
> invention by the applicant for patent, except that an international application filed under the
> treaty defined in section 351(a) shall have the effects for purposes of this subsection of an
> application filed in the United States only if the international application designated the United
> States and was published under Article 21 (2) of such treaty in the English language.**

Claims 34-51, 54-57, 60-63, 66-69 and 72-81 are rejected under 35 U.S.C.

102(e) as being anticipated by Ausubel (U.S. Patent No. 5,905,975).

Referring to claim 34. Ausubel discloses an auction method of determining a

successful bidder for a single kind of product or products (see at least col.2, lines 37-50

and col.10 lines 43-54. Ausubel teaches conducting an auction for a single kind of

shares or shares.), the auction method being executed in a server computer connected

with a plurality of client computers via a network, each client computer belonging to a

respective bidder (Ausubel: Fig. 1), the auction method comprising the steps of:

a) transmitting, from the server computer, information on a product to be

auctioned to the plurality of client computers via the network (Ausubel: column 10, lines

57-61, column 11, lines 5-8, column 12, lines 39-48 and Figs 1,2,3D);

b) receiving, in the server computer, price information for determining a price that

a bidder thinks acceptable to pay for the product from each of the plurality of client

computers via the network (Ausubel: column 11, lines 5-14, and Figs 1,2,3D);

c) judging, in the server computer, whether a current auction price is equal to or

lower than the price that the bidder thinks acceptable to pay, for each bidder

(Ausubel: see at least Fig.3D, col.11 line 5-col.12, line 30. On receipt of bidders flexible

pricing structure that is the first bidder is willing to pay any price between $10 to $14,

the server judges that the current auction price of $10.00 per share is equal to or lower

that the bidder thinks acceptable to pay and therefore based upon this judgment the

server increments the share prices to $12 or $13 or $14. Bids from other bidders are to

be judged on similar basis. Also refer to col.12, line 39-col.13, line 5);

d) determining, in the server computer, each remaining bidder who has sent the

price information by which it is judged that the current auction price is equal to or lower

than the price in step c) (Ausubel: see at least Fig.3D, col.11 line 5-col.12, line 30. On

receipt of bidders flexible pricing structure that is the first bidder is willing to pay any

price between $10 to $14, the server judges that the current auction price of $10.00 per

share is equal to or lower that the bidder thinks acceptable to pay and therefore based

upon this judgment the server increments the share prices to $12 or $13 or $14. Bids

from other bidders are to be judged on similar basis. Also refer to col.12, line 39-col.13,

line 5);

     e) judging, in the server computer, whether a competitive state occurs or not,

based on the amount of products to be auctioned and the sum of amounts of products

that the bidders desire to purchase (Ausubel: see at least Fig.3D, col.11 line 5-col.12,

line 30. Ausubel suggests determining if a competitive state occurs or not, based on the

amount of products to be auctioned and the sum of amounts of products that the

bidders desire to purchase because based upon the number of bidders willing to accept

a higher price than the auction price of $10 the server is capable of incrementing the

auction price to $11 or $12 and so on. Also refer to col.12, line 39-col.13, line 5);

     f) in response to a judgment in step e) that a competitive state does not occur,

determining, in he server computer, the remaining bidder as a successful bidder

(Ausubel: see at least Fig.3A &D, col.12, line 39-col.13, line 5. If Ausubel determines

that a competitive state does not occur that is the supply equals or exceeds the demand

the auction is concluded with the remaining bidder(s) as successful bidder (s).); and

     g) in response to a judgment in step e) that a competitive state occurs, increasing

the auction price by a predetermined value and repeating steps c), d), and e) (Ausubel:

see at least Fig.3D, col.11 line 5-col.12, line 30. Ausubel suggests determining if a

competitive state occurs or not, based on the amount of products to be auctioned and

the sum of amounts of products that the bidders desire to purchase because based

upon the number of bidders willing to accept a higher price than the auction price of $10

the server is capable of incrementing the auction price to $11 or $12 and so on by

repeating steps c/d/e.).

Referring to claim 35. Ausubel further discloses an auction method wherein the

price information includes a desired price with which a bidder desires to purchase the

product and an acceptable price which the bidder accepts to pay in addition to the

desired price (Ausubel: column 16, lines 25-45).

Referring to claim 36. Ausubel further discloses an auction method comprising

the steps of:

h) determining, in the server computer, an abandoned bidder who sent the

price information by which it is judged that the current auction price is higher than the

price in step c) (Ausubel: TABLE 1A); and

i) excluding the abandoned bidder (Ausubel: TABLE 1B).

Referring to claims 37-39. The limitations of claims 37-39 closely parallel those of

claims 34-36. Claims 37-39 are rejected under the same rationale as set forth in claims

34-36.

Referring to claims 40-44.. The limitations of claims 40-44 closely parallel those

of claims 34-36. Claims 40-44 are rejected under the same rationale as set forth in

claims 34-36.

Referring to claims 45-49. The limitations of claims 45-49 closely parallel those of claims 34-36. Claims 45-49 are rejected under the same rationale as set forth in claims 34-36.

Referring to claim 50. Ausubel further discloses an auction method wherein a plurality of products are auctioned and a plurality of successful bidders are determined in the auction method (Ausubel: column 25-26, "Example Six of the Invention's Application).

Referring to claim 51. Ausubel further discloses an auction method wherein the server computer holds the predetermined value (Ausubel: column 25-26, "Example Six of the Invention's Application).

Referring to claim 54. Ausubel further discloses an auction method wherein, in the step e), it is determined that the competitive state occurs when the sum of amounts of products that the bidders desire to purchase are larger than the amount of products to be auctioned (Ausubel: see at least Fig.3D, col.11 line 5-col.12, line 30 and col.12, lines 39-64. Ausubel suggests determining if a competitive state occurs or not, based on the demand versus supply and if the bidder (s) desire to purchase larger than the available products the auction price is incremented and informed to the bidder(s) and the auction process is continued.).

Referring to claim 55. Ausubel further discloses an auction method, wherein, in the step e), if the total of (1) the sum of minimum desired amounts of bidders who are included in the bidders having a nonzero desired amount and who do not purchase for an amount less than a minimum desired amount, (2) the number of bidders each having a minimum desired amount (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claim 56. Ausubel further discloses an auction device wherein a plurality of products are auctioned and a plurality of successful bidders are determined (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claim 57. Ausubel further discloses an auction device further comprising means for holding the predetermined value (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claims 60-63. The limitations of claims 60-63 closely parallel those of claims 54-57. Claims 60-63 are rejected under the same rationale as set forth in claims 54-57.

Referring to claims 66-69. The limitations of claims 66-69 closely parallel those of claims 54-57. Claims 66-69 are rejected under the same rationale as set forth in claims 54-57.

Referring to claims 72-73. The limitations of claims 66-69 closely parallel those of claims 54-57. Claims 72-73 are rejected under the same rationale as set forth in claims 54-57.

Referring to claims 74-77. The limitations of claims 74-77 closely parallel those of claims 54-57. Claims 74-77 are rejected under the same rationale as set forth in claims 54-57.

Referring to claim 78, Ausubel teaches displaying, during the auction, a transaction process when the competitive state is resolved and a transaction process during the competitive state before the competitive state is solved (see at least col.9, lines 41-43 and col.10, lines 1-2. The auctioneer server's information/messages [correspond to the results of the transaction process] are transmitted to the user during auction [that is when the competitive state is not resolved] and when auction is completed [that is when the competitive state is resolved] and these messages are displayed to the user).

Referring to claims 79-81. The limitations of claims 79-81 are closely parallel to those of claim 78. Claims 79-81 are rejected under the same rationale as set forth in claim 78.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.**

6.1.   Claims 52-53, 58-59, 64-65 and 70-71 are rejected under 35 U.S.C.

103(a) as being unpatentable over Ausubel (U.S. Patent No. 5,905,975) in view of

Fisher (U.S. Patent No. 5,835,896).

Referring to claims 52-53, 58-59, 64-65 and 70-71. Fisher discloses an auction

method comprising the steps, in a server computer, of:

reducing an auction price if no bidder exists (Fisher: column 11, lines 43-64);

checking whether at least one bidder exists (Fisher: column 11, lines 43-64),

determining the existing bidder as a successful bidder if one bidder exists, and

further reducing the auction price if no bidder exists and repeating the checking and

succeeding steps (Fisher: column 11, lines 43-64).

It would have been obvious to one of ordinary skill in the art to have modified the

method already disclosed by Ausubel to have included the method as disclosed in

Fisher in order to achieve sales volume goals (Fisher: column 11, lines 43-64).

6.2.   Claims 82-83 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Ausubel (U.S. Patent No. 5,905,975) in view of Official Notice.

Referring to claim 82, Ausubel teaches all the limitations of claim 40, as analyzed above, and also teaches the allocation of products based upon auction rules (see at least col.13, lines 1-6) but does not disclose explicitly the rule that when the plural bidders transmit the same order information in step d/, the products are allocated to the bidders in order of time of transmission of the order information from the client computer to the server. The examiner takes Official Notice of the fact and benefits of exercising the rule in an auction that when the plural bidders transmit the same order information in step d/, the products are allocated to the bidders in order of time of transmission of the order information from the client computer to the server because if the demand is more that the available supplies this will be one of the methods to decide the allocation of the products. It is also a conventional wisdom to award a product on first come basis. In view of the Official Notice, it would be obvious to one of an ordinary skilled in the art to incorporate the well-known practice that when the plural bidders transmit the same order information in step d/, the products are allocated to the bidders in order of time of transmission of the order information from the client computer to the serve, because, as analyzed above it is a conventional wisdom to award available products on first come basis.

Referring to claim 83. The limitations of claim 83 are closely parallel to those of claim 82. Claim 83 is rejected under the same rationale as set forth in claim 82.

Conclusion

7.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. Godin et al. (US 20010009005A1, see at least paragraphs 15,

33) teaches an auction process being conducted on Internet including displaying current

prices of products to the bidders.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-

6756. The examiner can normally be reached on Increased Flex/Hoteling.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

        Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

                                                        Yogesh C Garg

Primary Examiner
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